

ESTTA Tracking number: **ESTTA157890**

Filing date: **08/20/2007**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165876
Party	Plaintiff House of Blues Brands Corp.
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Date	08/20/2007
Attachments	Opposer's Reply in Furtherance of Motion to Strike Notice of Reliance on 30(b)(6) Deposition.pdf (3 pages)(123179 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HOUSE OF BLUES BRANDS CORP.

Opposer,

v.

CELEBRITES PUBLISHING CORP.,

Applicant.

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Consolidated Opposition Nos.

91165876; 91165899; and 91165901

OPPOSER'S REPLY IN FURTHERANCE OF ITS MOTION TO STRIKE APPLICANT'S
NOTICE OF RELIANCE ON RULE 30(b)(6) DEPOSITION

Opposer, House of Blues Brands Corp., files this reply in furtherance of its motion to strike Applicant's Notice of Reliance on Rule 30(b)(6) Deposition. Applicant has not demonstrated that any of the portions of Opposer's 30(b)(6) discovery deposition it seeks to introduce are required to avoid the inclusion of misleading testimony. Therefore, Applicant has failed to meet the procedural and substantive requirements established by Trademark Rule of Practice 37 C.F.R. § 2.120(j)(4) and the Board should strike Applicant's Notice of Reliance.

Applicant's Notice of Reliance and its Response both fail to provide the Board with a single example of misleading testimony submitted by Opposer that is corrected by the portions of testimony Applicant has submitted. Instead, Applicant's Response seeks to persuade the Board that Rule 2.120(j)(4) permits Applicant to introduce portions of the transcript that are merely related to the portions relied upon by Opposer. That a portion of the transcript may relate to and generally "expand upon" a topic touched on in the transcript portions submitted by Opposer certainly does not mean that such information "should in fairness be considered so as to make not *misleading* what was offered by [Opposer]." 37 C.F.R. § 2.120(j)(4) (emphasis added). The

purpose of the Rule is to prevent situations where the deposing party intentionally leaves out portions of the transcript that give a different meaning to the included portions, not to ensure that everything the deponent has to say on a broad general topic is introduced.

Applicant provides an example in its Response that demonstrates Applicant's misunderstanding of Rule 2.120(j)(4) and illustrates the danger of reading the Rule too broadly. *See* Applicant's Response at 2 (Document No. 30). Applicant contends that, because Opposer is relying on portions of the transcript generally related to marketing, Applicant is entitled to introduce portions of the transcript related to trademark searches conducted and potential logo designs—specific topics not included anywhere in the portions of transcript introduced by Opposer. *Id.* There is nothing misleading about including portions of the transcript relating to target customers while excluding portions relating to trademark searches. Reading the Rule this broadly would effectively permit a party to introduce unsolicited self-serving statements by its officer as long as they are generally related to any broad topic the deposing party seeks to introduce.


Applicant further contends that, because Opposer is relying on eighty-two of the one hundred-seven pages of the deposition, Opposer is somehow misleading the Board *per se*. There is no support for this argument and it again demonstrates Applicant's misunderstanding of the strictness of Rule 2.120(j)(4). Opposer excluded portions of the transcript relating to specific topics it does not choose to rely on or that it did not fully explore in the deposition. These are legitimate reasons and it is improper for Applicant to suggest that, by including most of its own deposition, but not all, Opposer is attempting to mislead the Board.

If Applicant wanted to introduce testimony that “fleshes out” certain topics, then Applicant's obligation was to depose its client during the testimony period, not pick and choose

favorable portions Opposer's discovery deposition. Applicant is only permitted to introduce portions of Opposer's discovery deposition that correct otherwise misleading testimony. Because Applicant has not provided the Board with a single example of misleading testimony that requires the inclusion of the portions of transcript submitted with Applicant's Notice of Reliance, Applicant has failed to meet its burden under Rule 2.120(j)(4) and the Board should strike Applicant's Notice of Reliance on Rule 30(b)(6) Deposition.

Respectfully submitted,

Date: 8/20/2007


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply In Furtherance Of Opposer's Motion To Strike Applicant's Notice Of Reliance On Rule 30(b)(6) Deposition was served on the following counsel this 20th day of August, 2007, via United Parcel Service (UPS), postage pre-paid:

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